

1 Mark L. Javitch\* (CA SBN 323729)  
2 210 S Ellsworth Ave #486  
3 San Mateo, CA 94401  
4 Telephone: 402-301-5544  
5 Facsimile: 402-396-7131  
6 javitchm@gmail.com  
7 *Attorney for Plaintiff and the Class*  
8 \*Pending Pro Hac Vice Admission

9 UNITED STATES DISTRICT COURT  
10 DISTRICT OF NEBRASKA

pd 8050477

11 TERRENCE SHANAHAN, individually and on  
12 behalf of all others similarly situated

Case No.: 8:19CV40

13 Plaintiff,

**CLASS ACTION COMPLAINT**

14 v.

**JURY TRIAL DEMANDED**

15 RESOURCE MANAGEMENT GROUP, INC., a  
16 Kansas corporation, and PAUL M.  
17 GUNZELMAN, an individual

Defendant.

18 **CLASS ACTION COMPLAINT**

19 1. Plaintiff TERRENCE SHANAHAN ("Plaintiff") brings this Class Action Complaint and  
20 Demand for Jury Trial against Defendant RESOURCE MANAGEMENT GROUP, INC. and Defendant  
21 PAUL M. GUNZELMAN (together, "Defendants") to stop their illegal practice of making unauthorized  
22 calls that play prerecorded voice messages to the cellular telephones of consumers nationwide, and to  
23 obtain redress for all persons injured by their conduct. Plaintiff alleges as follows upon personal  
24 knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information  
25 and belief, including investigation conducted by his attorney.  
26  
27  
28

## NATURE OF THE ACTION

2. Defendants are debt collectors. As a primary part of their debt collection efforts, Defendants and their agents place thousands of automated calls employing a prerecorded voice message to consumers' cell phones nationwide.

3. Unfortunately, Defendants do not obtain prior express written consent to place these calls and, therefore, are in violation of the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227.

4. Congress enacted the TCPA in 1991 to restrict the use of sophisticated telemarketing equipment that could target millions of consumers *en masse*. Congress found that these calls were not only a nuisance and an invasion of privacy to consumers specifically but were also a threat to interstate commerce generally. *See* S. Rep. No. 102-178, at 2-3 (1991), as reprinted in 1991 U.S.C.C.A.N. 1968, 1969-71.

5. The TCPA targets unauthorized calls exactly like the ones alleged in this case, based on Defendants' use of a prerecorded voice called to consumers' cell phones without their consent.

6. By placing the calls at issue, Defendants have violated the privacy and statutory rights of Plaintiff and the Class.

7. Plaintiff therefore seeks an injunction requiring Defendants to stop clogging consumers' cell phones with unwanted prerecorded messages, as well as an award of actual and statutory fines to the Class members, together with costs and reasonable attorneys' fees.

## PARTIES

8. Plaintiff Terrence Shanahan is a natural person and is a citizen of the District of Nebraska.

9. Defendant RESOURCE MANAGEMENT GROUP, INC. ("Defendant RMG") is a corporation organized and existing under the laws of the State of Kansas with its principal place of business at PO Box 2491, Matthews, North Carolina, 28105.

10. Defendant PAUL M. GUNZELMAN ("Defendant Gunzelman") is a natural person and is a citizen of the State of Kansas. Defendant Gunzelman is President, Officer, and Director of Defendant RMG.

## **JURISDICTION AND VENUE**

11. This Court has federal subject matter jurisdiction under 28 U.S.C. § 1331, as the action arises under the Telephone Consumer Protection Act, 47 U.S.C. § 227, which is a federal statute.

12. This Court has personal jurisdiction over Defendants because they conduct business in this District and in the State of Nebraska and because the events giving rise to this lawsuit occurred in this District.

13. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because Defendants regularly conduct business in the State of Nebraska and in this District, and because the wrongful conduct giving rise to this case occurred in this District.

## **COMMON FACTUAL ALLEGATIONS**

14. Defendants are debt collectors.

15. To increase the effectiveness of their debt collections, Defendants repeatedly called and sent prerecorded voice messages to thousands of cell phones at once.

16. When the Class members answered their cell phones or listened to their messages expecting to hear from a real person, Defendants pulled a bait and switch by playing a prerecorded voice message.

17. Defendants respected Class Members' time and privacy so little that it did not even employ a real person to call them – it employed a machine to play prerecorded messages to thousands of consumers at once in the hopes that a couple may call the company back.

18. Unfortunately, Defendants failed to obtain consent from Plaintiff and the Class before bombarding their cell phones with these illegal voice recordings.

## **FACTS SPECIFIC TO PLAINTIFF TERRENCE SHANAHAN**

19. On January 18, 2019, Plaintiff received a call from Defendants and/or their agents on his cell phone.

20. When Plaintiff listened to the message, he heard a prerecorded electronic message from Defendants.

21. The voice message asked for the call to be returned to Defendants' phone number at 980-999-8205.

22. Plaintiff never consented to receive calls from Defendants. Plaintiff has no relationship with Defendants and has never requested that Defendants contact him in any manner.

23. Defendants' intrusive calls adversely affected Plaintiff's right to privacy.

### CLASS ALLEGATIONS

24. **Class Definition:** Plaintiff Shanahan brings this action pursuant to Federal Rule of Civil Procedure 23(b)(3) on behalf of himself and a class defined as follows:

**No Consent Class.** All persons in the United States who: (1) from the last 4 years to present (2) received at least one telephone call; (3) on his or her cellular telephone; (4) that was called using an autodialer and/or played a prerecorded voice message; (5) for the purpose of Defendants' collections efforts; (6) where Defendants did not have any record of prior express written consent to place such call at the time it was made.

25. The following people are excluded from the Class: (1) any Judge or Magistrate presiding over this action and members of their families; (2) Defendants, Defendants' subsidiaries, parents, successors, predecessors, and any entity in which the Defendants or their parents have a controlling interest and its current or former employees, officers and directors; (3) persons who properly execute and file a timely request for exclusion from the Class; (4) persons whose claims in this matter have been finally adjudicated on the merits or otherwise released; (5) Plaintiff's counsel and Defendants' counsel; and (6) the legal representatives, successors, and assigns of any such excluded persons.

26. **Numerosity:** The exact number of the Class members is unknown and not available to Plaintiff, but it is clear that individual joinder is impracticable. On information and belief, Defendants placed telephone calls to thousands of consumers who fall into the definition of the Class. Members of the Class can be identified through Defendants' records.



1       27.     **Typicality:** Plaintiff's claims are typical of the claims of other members of the Class, in  
2 that Plaintiff and the Class members sustained damages arising out of Defendants' uniform wrongful  
3 conduct and unsolicited telephone calls.

4       28.     **Adequate Representation:** Plaintiff will fairly and adequately represent and protect the  
5 interests of the other members of the Class. Plaintiff's claims are made in a representative capacity on  
6 behalf of the other members of the Class. Plaintiff has no interests antagonistic to the interests of the  
7 other members of the proposed Class and is subject to no unique defenses. Plaintiff has retained  
8 competent counsel to prosecute the case on behalf of Plaintiff and the proposed Class. Plaintiff and his  
9 counsel are committed to vigorously prosecuting this action on behalf of the members of the Class and  
have the financial resources to do so.

10       29.     **Policies Generally Applicable to the Class:** This class action is appropriate for  
11 certification because Defendants have acted or refused to act on grounds generally applicable to the  
12 Class as a whole, thereby requiring the Court's imposition of uniform relief to ensure compatible  
13 standards of conduct toward the Class members and making final injunctive relief appropriate with  
14 respect to the Class as a whole. Defendants' practices challenged herein apply to and affect the Class  
15 members uniformly, and Plaintiff's challenge of those practices hinge on Defendants' conduct with  
respect to the Class as a whole, not on facts or law applicable only to Plaintiff.

16       30.     **Commonality and Predominance:** There are many questions of law and fact common to  
17 the claims of Plaintiff and the Class, and those questions predominate over any questions that may  
18 affect individual members of the Class. Common questions for the Class include, but are not  
necessarily limited to the following:

- 19       i.       Whether Defendants' conduct violated the TCPA;  
20       ii.       Whether Defendants' conduct violated the TCPA *willingly* and/or *knowingly*;  
21       iii.       Whether Defendants called and played its voice recordings to thousands of cell phones;  
22       iv.       Whether Defendants obtained prior written consent prior to contacting any members of  
the Class;  
23       v.       Whether members of the Class are entitled to treble damages based on the knowing or  
24 willfulness of Defendants' conduct.

25       31.     **Superiority:** This case is also appropriate for class certification because class  
26 proceedings are superior to all other available methods for the fair and efficient adjudication of this  
27 controversy as joinder of all parties is impracticable. The damages suffered by the individual members  
28

1 of the Class will likely be relatively small, especially given the burden and expense of individual  
2 prosecution of the complex litigation necessitated by Defendants' actions. Thus, it would be virtually  
3 impossible for the individual members of the Class to obtain effective relief from Defendants'  
4 misconduct. Even if members of the Class could sustain such individual litigation, it would still not be  
5 preferable to a class action, because individual litigation would increase the delay and expense to all  
6 parties due to the complex legal and factual controversies presented in this Complaint. By contrast, a  
7 class action presents far fewer management difficulties and provides the benefits of single adjudication,  
8 economy of scale, and comprehensive supervision by a single Court. Economies of time, effort and  
9 expense will be fostered and uniformity of decisions ensured.

### 10 CAUSE OF ACTION

#### 11 Violation of 47 U.S.C. § 227

#### 12 (On behalf of Plaintiff and the Class)

13 32. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

14 33. Defendants and/or its agent placed telephone calls to Plaintiff's and the Class members'  
15 cellular telephones without having their prior express written consent to do so.

16 34. Defendants' calls were made for a commercial purpose.

17 35. Defendants played a prerecorded voice message to the cell phones of Plaintiff and the  
18 Class members as proscribed by 47 U.S.C. § 227(b)(1)(A)(iii).

19 36. As a result of its unlawful conduct, Defendants repeatedly invaded Plaintiff's and the  
20 Class's personal privacy, causing them to suffer damages and, under 47 U.S.C. § 227(b)(3)(B), entitling  
21 them to recover \$500 in civil fines for each violation and an injunction requiring Defendants to stop  
22 their illegal calling campaign.

23 37. Defendants and/or its agent made the violating calls "*willfully*" and/or "*knowingly*" under  
24 47 U.S.C. § 227(b)(3)(C).

25 38. If the court finds that Defendants *willfully* and/or *knowingly* violated this subsection, the  
26 court may exercise its discretion to increase the amount of the award from \$500 to \$1500 per violation  
27 under 47 U.S.C. § 227(b)(3)(C).  
28

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff Terrence Shanahan, individually and on behalf of the Class, prays for the following relief:

- A. An order certifying the Class as defined above, appointing Plaintiff Terrence Shanahan as the Class representative and appointing his counsel as Class Counsel;
- B. An order declaring that Defendants' actions, as set out above, violate the TCPA;
- C. An order declaring that Defendants' actions, as set out above, violate the TCPA *willfully* and *knowingly*;
- D. An injunction requiring Defendants to cease all unlawful calls without first obtaining the call recipients' prior express written consent to receive such calls, and otherwise protecting interests of the Class;
- E. An award of actual damages and/or statutory fines and penalties;
- F. An award of reasonable attorneys' fees and costs; and
- G. Such other and further relief that the Court deems reasonable and just.

**JURY DEMAND**

Plaintiff requests a trial by jury of all claims that can be so tried.

Dated: January 25, 2019

Respectfully submitted,

TERRENCE SHANAHAN, individually and on  
behalf of all others similarly situated,

By: /s/ Mark L. Javitch  
Plaintiff's Attorney

Mark L. Javitch (California SBN 323729)\*  
Mark L. Javitch, Attorney at Law

210 S. Ellsworth Ave #486  
San Mateo CA 94401  
Tel: 402-301-5544  
Fax: 402-396-7131

*Attorney for Plaintiff and the Putative Class*  
\*Pending Pro Hac Vice Admission



The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

## **I. (a) PLAINTIFFS**

TERRENCE SHANAHAN

**(b) County of Residence of First Listed Plaintiff** Douglas County, NE

(EXCEPT IN U.S. PLAINTIFF CASES)

**(c) Attorneys (Firm Name, Address, and Telephone Number)**

Mark L. Javitch, 210 S. Ellsworth Ave #486, San Mateo CA 94401

## DEFENDANTS

RESOURCE MANAGEMENT GROUP, INC.

PAUL M. GUNZELMAN

County of Residence of First Listed Defendant      Sedgewick County, KS

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

## II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

☐ 1 U.S. Government  
Plaintiff

☒ 3 Federal Question  
(U.S. Government Not a Party)

☐ 2 U.S. Government  
Defendant

**4 Diversity**  
(Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff  
(For Diversity Cases Only) and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4

Citizen of Another State      ☐ 2      ☐ 2      Incorporated *and* Principal Place  
of Business In Another State      ☐ 5      ☐ 5

Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

**IV. NATURE OF SUIT** *(Place an "X" in One Box Only)*

[Click here for: Nature of Suit Code Descriptions.](#)

CONTRACT		TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice		<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability  <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<b>PRISONER PETITIONS</b>		<b>LABOR</b>	<b>SOCIAL SECURITY</b>	<b>FEDERAL TAX SUITS</b>
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty  <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
				<b>IMMIGRATION</b>		
				<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions		

**V. ORIGIN** (Place an "X" in One Box Only)

☒ 1 Original Proceeding      ☐ 2 Removed from State Court      ☐ 3 Remanded from Appellate Court      ☐ 4 Reinstated or Reopened      ☐ 5 Transferred from Another District (specify)      ☐ 6 Multidistrict Litigation - Transfer      ☐ 8 Multidistrict Litigation - Direct File

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (*Do not cite jurisdictional statutes unless diversity*):  
47 U.S.C. § 227 (Telephone Consumer Protection Act of 1991 or "TCPA")

Brief description of cause:  
Calls to Plaintiff's cell phone in violation of TCPA

**VII. REQUESTED IN COMPLAINT:**

<input checked="" type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.	DEMAND \$ 5000000	CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
--	----------------------	--

**VIII. RELATED CASE(S)  
IF ANY**

*(See instructions):*

JUDGE

DOCKET NUMBER

DATE \_\_\_\_\_

SIGNATURE OF ATTORNEY OF RECORD

**FOR OFFICE USE ONLY**

RECEIPT #	AMOUNT	APPLYING IFP	JUDGE	MAG. JUDGE
-----------	--------	--------------	-------	------------

January 25, 2019

Roman L. Hruska Federal Courthouse  
111 South 18th Plaza  
Suite 1152  
Omaha, NE 68102

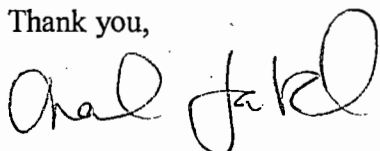
Dear Clerk of the Court:

Please see the attached complaint and the check for the \$400.00 filing fee.

Although I am not yet admitted to this case, I am registered with ECM/CF and I will file the application for Pro Hac Vice admission online as soon as I have the case number.

Your help is greatly appreciated.

Thank you,



Mark L. Javitch\* (CA SBN 323729)  
210 S Ellsworth Ave #486  
San Mateo, CA 94401  
Telephone: 402-301-5544  
Facsimile: 402-396-7131  
[javitchm@gmail.com](mailto:javitchm@gmail.com)

*Attorney for Plaintiff and the Class*  
\*Pending Pro Hac Vice Admission

RECEIVED

JAN 28 2019

CLERK  
U.S. DISTRICT COURT

PLY TO SEAL

PRESS FIRMLY TO SEAL

PRIORITY MAIL EXPRESS  
POSTAGE REQUIRED



This envelope is made from post-consumer waste. Please recycle - again.

# PRIORITY ★ MAIL ★ EXPRESS™

OUR FASTEST SERVICE IN THE U.S.

RECEIVED

JAN 28 2019

CLERK  
U.S. DISTRICT COURT

WHEN USED INTERNATIONALLY,  
A CUSTOMS DECLARATION  
LABEL MAY BE REQUIRED.



EP13F July 2013 OD: 12.5 x 9.5



PS10001000006

VISIT US AT USPS.COM®

		<b>PRIORITY MAIL EXPRESS</b> U.S. POSTAGE PAID Shippo ePostage	
		<b>USPS PRIORITY MAIL EXPRESS</b>	
MARK L. JAVITCH ATTORNEY AT LAW UNIT 486 210 S ELLSWORTH AVE SAN MATEO CA 94401-6000		Ship Date: 01/25/19 Flat Rate Env	
SIGNATURE REQUIRED			
ROMAN L. HRUSKA FEDERAL COURTHOUSE US DISTRICT COURT 111 S 18TH PLZ STE 1452 OMAHA NE 68102-1322			
USPS SIGNATURE TRACKING # EP			
9281 7901 7554 7700 0000 0734 95			

destinations. See DMM and IIM at [pe.usps.com](http://pe.usps.com) for complete details.

+ Money Back Guarantee for U.S. destinations only.



UNITED STATES  
POSTAL SERVICE